IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1068 OF 1989

1. Kana Nagu Mhatre
(since deceased through LRs.)
A) Janu Kana Mhatre,
Age 55 years, Occ.: Agriculture,
R/at Dhakta Khanda, Tal.Panvel,
Dist.Raigad.
B) Maya Kana Mhatre,
Age 52 years, Occ.: Agriculture,
R/at Dhakta Khanda, Panvel,
Dist.Raigad.
C) Baban Kana Mhatre,
Age 50 years, Occ.: Agriculture,
residing at as above.
D) Gurunath Kana Mhatre,
Age 48 yrs. Occ.: Agriculture,
residing at as above.
E) Ambaji Kana Mhatre,
Age: 46 years, Occ.: Agriculture,
residing at as above.
F) Mandabai Harischandra Patil,
Age: 42 years, Occ.: Housewife,
residing at Walwali, Tal.Panvel,
Dist. Raigad.

2. Padu Nagu Mhatre. .... Appellants.

Versus.

The Special Land Acquisition Officer,
Metro Centre No.1, Panvel, Taluka:
Panvel, Dist. Raigad. ... Respondents.

ALONG WITH

FIRST APPEAL NO.1069 OF 1989

The State of Maharashtra. ... Appellant.

Versus.

1. Kana Nagu Mhatre
(since deceased through LRs.)

A) Janu Kana Mhatre, son,
Age 55 years, Occ.: Agriculture,
R/at Dhakta Khanda, Tal.Panvel,
Dist.Raigad.
B) Maya Kana Mhatre, son,
Age 52 years, Occ.: Agriculture,
R/at Dhakta Khanda, Panvel,
Dist.Raigad.
C) Baban Kana Mhatre, son,
Age 50 years, Occ.: Agriculture,
residing at as above.
D) Gurunath Kana Mhatre, son,
Age 48 yrs. Occ.: Agriculture,
residing at as above.
E) Ambaji Kana Mhatre, son,
Age: 46 years, Occ.: Agriculture,
residing at as above.
F) Mandabai Harischandra Patil,
daughter, Age: 42 years, Occ.:
Housewife, residing at Walwali,
Tal. Panvel, Dist. Raigad.

2. Padu Nagu Mhatre. .... Respondents
(Org.Claimants)

Shri S.M.Kamble for the Appellants in F.A.1068/89 and Respondents in F.A.1069/89.

Shri K.K.Tated, A.G.P. for the Respondent in F.A.No.1068/89 and Appellants in F.A.1069/89.

CORAM : ABHAY S.OKA, J.

DATED : 16th March, 2006.

ORAL JUDGMENT.

1. These Appeals can be disposed of by a common judgment as the Appeals arise out of the same Judgment and Award delivered by the learned Civil Judge, Senior Division, Raigad at Alibag in a reference proceedings

under section 18 of the Land Acquisition Act, 1894. On 3rd February 1970, large tracks of lands in various villages in Taluka Panvel, District Raigad were notified for acquisition for New Bombay Project by issuing a notification under section 4 of the Land Acquisition Act, 1894 (the said Act of 1894). The land subject matter of these Appeals is situated at Panvel, Taluka Panvel, Dist. Raigad. The Special Land Acquisition Officer fixed the market value of the land at the rate of Rs.1.5 per sq.meter. The claim of the original Claimants, namely the Appellants in First Appeal No.1068 of 1989 made in response to the notice under section 9 of the said Act of 1894 was Rs.20/- per sq.meters. By the impugned Judgment and Award the Reference Court fixed the compensation by taking the market value at the rate of Rs.15/- per sq.meters.

2. The learned Counsel appearing for the Appellants/Claimants placed reliance on the decision of this Court in First Appeal No.754 of 1986 and other connected matters. The said decision is dated 25th/26th February 1993. The learned Counsel for the Appellants submitted that a group of First Appeals decided by the said decision relates to the lands acquired under the Notification dated 3rd February 1970 from villages Panvel and Kamothe, Taluka Panvel, District Raigad. The

market rate fixed by this Court is between Rs.20/- per sq.meter and Rs.25/- per sq.meter depending upon the location of the acquired land. He, therefore, submitted that the Appellants are entitled to the market value at the rate of Rs.25/- per sq.meter. He pointed out the evidence relating to the location of the acquired land.

3. Shri Tated, the learned A.G.P. appearing for the State pointed out that the Claimants had made claim only at the rate of Rs.20/- per sq.meters in response to the notice under section 9 of the said Act of 1894 and therefore, in view of the law laid down by the Division Bench of this Court, in a reference under section 18, the Appellants cannot claim at the rate which is more than Rs.20/- per sq.meter. He submitted that in view of the fact and circumstances of the case and considering the evidence on record, the Reference Court has rightly fixed rate at Rs.15/- per sq.meter and no interference is required.

4. A perusal of the evidence on record discloses that on the date of section 4 notification, there was a factory of M/s.Jenson and Nicholson near the acquired land. It is stated by the Claimant No.1 in his evidence that the land was situated very close to Bombay Pune National Highway. He pointed out that S.T.stand was

close to the acquired land. The evidence indicate that electricity and water supply was available to the acquired land. It is stated in the evidence of the Claimants that Hindustan Organic Chemicals Ltd. has constructed residential quarters of their employees at a distance of 400 feet from the acquired.

5. The Claimants have examined as an expert valuer. He deposed that the acquired land was within the extended limits of Panvel Municipal Council and had the benefit of all the infra-structural and civic amenities at short distance.

6. So far as the location of the land is concerned, there seems to be very little dispute. Reliance was placed by the Claimants on the decision of this Court in First Appeal No.754 of 1986 and submitted that the said decision will apply and the market value will have to be fixed at the rate of above Rs.20/- per sq.feet. It is not in dispute that the said decision of the Division Bench of this Court has attained finality.

7. A perusal of the said decision shows that this Court has considered cases of land which are comparable to the acquired land which is the subject of these Appeals. The expert valuer Shri Jeevan Kulkarni has

stated that the acquired land is at a distance of 1200 meters from Bombay-Pune National Highway. Therefore, in terms of the aforesaid decision of the Division Bench, the market value of the acquired land will have to be fixed at Rs.20/- per sq.meter. In view of this position, the Appeal of the State Government will have to be dismissed.

8. In view of the above findings, the following order is passed:

FIRST APPEAL NO.1068/1989.

i) The impugned Judgment and Award is modified and it is held that the Appellants are entitled to compensation by calculating the market value at the rate of Rs.20/- per sq.meter. In addition to the market value, the Appellants/ Claimants will be entitled to statutory benefits under sections 23(1-A), 23(2) and section 28 of the Land Acquisition Act, 1894 which are already granted by the impugned Judgment and Award.

ii) The Reference Court will make necessary calculation of the amount payable to the

Claimants within a period of four months from the date of receipt of writ of this order.

iii) The Appellants will be entitled to proportionate costs throughout.

iv) The Appeal is partly allowed in the above terms.

FIRST APPEAL NO.1069 OF 1989.

i) The Appeal is dismissed. The Appellant will pay costs of the Appeal to the Respondents.

Judge.